

MARK P. VELEZ, ESQ. (SBN 163484)
NATALYA V. GRUNWALD, ESQ. (SBN265084)
THE VELEZ LAW FIRM, PC
3010 Lava Ridge Court, Suite 120
Roseville, California 95661
Telephone: (916) 774 – 2720
Facsimile: (916) 774 – 2730
velezlaw@live.com

Attorney for Plaintiff BRANDY OLMSTED

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BRANDY OLMSTED,

Plaintiff,

vs.

FOUNDATION PARTNERS GROUP, LLC A
Delaware Corporation; ANDY LOPEZ, An
Individual, inclusive,

Defendants.

Case No.:

**PLAINTIFF’S COMPLAINT FOR
DAMAGES**

- 1. Sex and Gender
Discrimination; violation of Gov. Code
§12940 et. Seq.;**
- 2. Sexual Harassment/Hostile Work
Environment; violation of Gov. Code §12940;**
- 3. Assault and Battery violation of
California Civil Code Section 1708.5;**
- 4. Retaliation in violation of Gov. Code
§§12926 et seq., 2926(k)(4);12926(k)(j);**
- 5. Failure to Prevent, Harassment,
Retaliation and Discrimination; violation of
Gov. Code §12940(k);**
- 6. Negligent Supervision and Retention of
Unfit Employee.**

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT FOR DAMAGES

PARTIES AND JURISDICTION

1. Plaintiff, BRANDY OLMSTED , at all times was at all times relevant hereto, a resident of the State of California, and she did work for EMPLOYER DEFENDANTS, and each of them, in Butte County, California. Plaintiff BRANDY OLMSTED references that the acts which caused her harm occurred in Chico, Butte County, in the State of California.
2. Plaintiff, BRANDY OLMSTED, at all times was at all times relevant hereto, a resident of the State of California, and resides in Chico, Butte County, California.
3. At all relevant times herein, Defendants FOUNDATION PARTNERS GROUP, LLC, A Delaware Corporation ("Defendants FPG ") is, and was, a business entity of unknown form, doing business in the County of Butte, State of California, and qualified as an "Employer".
4. Defendant FOUNDATION PARTNERS GROUP, LLC A Delaware Corporation operates funeral homes in Butte County.

1 5. For ease of reference, Defendants FOUNDATION PARTNERS GROUP, LLC A Delaware
2 Corporation ("Defendants FPG"), and various unknown business entities, are sometimes
3 collectively referred to herein as the "EMPLOYER DEFENDANTS" in the body of the
4 complaint.
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6 6. Defendants FPG is, and was, a business entity doing business in the County of Butte State
7 of California, and qualified as an "Employer".
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9 7. Defendants FPG are in the business of providing funeral, cemetery and cremation services,
10 funeral homes, providing end of life transition services with operations throughout the State
11 of California, and qualified as an "Employer". Defendant was, at all times herein relevant,
12 Plaintiff's "Employer" as that term is defined under the Fair Employment and Housing Act
13 ("FEHA") at Government Code § 12926(d). Defendant FPG, had actual and constructive
14 notice of the wrongful conduct, discrimination, and retaliation perpetrated upon Plaintiff,
15 set forth below, had both the authority and the duty to prevent and correct the same, failed
16 to take reasonable action to prevent and correct the same and, by their conduct, condoned,
17 supported and ratified such wrongful conduct. Defendants were, at all times herein relevant,
18 Plaintiff's "Employer" as that term is defined under the Fair Employment and Housing Act
19 ("FEHA") at Government Code § 12926(d). Defendants FPG, had actual and constructive
20 notice of the wrongful conduct, discrimination, and retaliation perpetrated upon Plaintiff,
21 set forth below, had both the authority and the duty to prevent and correct the same, failed
22 to take reasonable action to prevent and correct the same and, by their conduct, condoned,
23 supported and ratified such wrongful conduct.
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8. Defendant ANDY LOPEZ (hereinafter “Defendant LOPEZ”), at all times herein relevant was a supervisor, manager and Defendants Area 1 Sales Director for Defendants FPG, and managing agent for Defendant FPG.

GENERAL ALLEGATIONS

9. At all times herein relevant, Defendants owed Plaintiff a duty to take all reasonable action to provide Plaintiff with a workplace free from unlawful discrimination, harassment and retaliation, and to take all reasonable action to prevent and correct discrimination, harassment, and retaliation in the workplace. Specifically, Defendants owed Plaintiff a duty: (1) to promulgate, in an effective way, policies, practices and guidelines regarding employment discrimination, harassment and retaliation; (2) to provide effective and adequate training to managers, supervisors and employees regarding employment discrimination, harassment and retaliation, how to take effective, timely and reasonable action to prevent employment discrimination, harassment and retaliation and, particularly, how to handle, in a reasonable, prompt and effective manner, complaints and noticed situations raising issues of employment discrimination, harassment and retaliation; (3) to provide realistic assurance to employees that defendants were serious about enforcing such policies against discrimination, harassment and retaliation; (4) to protect from retaliation employees who made or supported discrimination, harassment or retaliation complaints; (5) to conduct, in response to a complaint or actual or constructive notice of discrimination, harassment and retaliation, a good faith, reasonable, fair and prompt investigation of such complaint or in response to such notice; (6) to bring such investigation to a conclusion in a timely manner; (7) to take prompt and effective remedial action, where appropriate, to

1 prevent and correct discrimination, harassment and retaliation; (8) to maintain reasonably
2 thorough and adequate records regarding discrimination, harassment and retaliation
3 complaints, investigations, conclusions and remedial action; and (9) to avoid engaging in
4 and promoting actions which have the intended purpose and foreseeable effect of silencing
5 and quashing the voices of discrimination, harassment or retaliation complainants and others
6 who support or have supported discrimination, harassment or retaliation complaints.
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8 10. Defendants, and each of them, breached the above-mentioned duties in that, at all times
9 herein relevant, Defendants acted in a manner which they knew, should have known, and
10 did not care to know, condoned and supported discrimination, harassment and retaliation in
11 the workplace. Defendants failed and refused to take reasonable action to publish and
12 promulgate, in an effective manner, policies, practices and guidelines regarding
13 discrimination, harassment and retaliation. Defendants failed and refused to take reasonable
14 action to provide adequate and effective training to managers, supervisors and employees
15 regarding discrimination, harassment and retaliation, failed to effectively train managers,
16 supervisors and employees regarding how to prevent employment discrimination,
17 harassment and retaliation, and failed to adequately train managers, supervisors and
18 employees in how to reasonably, promptly and effectively handle complaints and notice
19 situations raising issues of employment, discrimination, harassment and retaliation.
20 Defendants responded to actual and constructive notice of and complaints regarding
21 discrimination harassment and retaliation in a manner calculated to defendant and delay,
22 rather than fairly and timely investigate situations noticed and complaints regarding
23 discrimination, harassment and retaliation, with the intended purpose and foreseeable effect
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1 of supporting management at all costs, condoning and supporting discrimination,
2 harassment and retaliation. Defendants engaged in the above acts and omissions knowingly
3 and as a matter of general business practice, without regard to the rights of employees,
4 including Plaintiff.
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6 11. At all times herein mentioned, each of the defendants was the actual and apparent agent,
7 servant and employee of each of the remaining defendants and in doing the things herein
8 after alleged were acting within the course and scope of their actual and apparent agency and
9 employment and with the knowledge, notification, consent and subsequent ratification of
10 each of the other defendants. Defendants engaged in the above acts and omissions knowingly
11 and as a matter of general business practice, without regard to the rights of employees,
12 including Plaintiff.
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14 **FACTUAL ALLEGATIONS**
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16 12. Plaintiff BRANDY OLMSTED is a 33 year old female who worked for Defendants FPG as
17 a Family Services Advisor in Defendants funeral homes and cemeteries business in Chico,
18 California. Plaintiff worked in that capacity from approximately November 2020 to August
19 6, 2021.
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21 13. As part of Plaintiff's job duties she was under the FPG reporting jurisdiction to Defendant
22 ANDY LOPEZ, who at FPG held the title of Area Sales Director for Area 1.

23 14. Plaintiff BRANDY OLMSTED's reporting structure included reporting to Location Leader,
24 Janice Brusie and manager Michelle Crandall. Plaintiff had a work stations at FPG's Chico
25 Cemetery, Glen Oaks Memorial Park and the Brusie Funeral Homes. There, Plaintiff's
26 job description included assisting end of life clients in purchasing FPG products and
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services. Her compensation was hourly and commission sales. The Chico FPG sales group was overseen by the Area 1 Sales Director, Defendant Andy Lopez.

15. In about February 9, 2021 Defendant Andy Lopez arrived in California to meet with various FPG funeral homes including the Brusie Funeral Homes. Defendant Lopez performed various site visits. Following a site visit at the Bruise FPG's funeral home, a work related dinner was held at the Red Tavern Restaurant in Chico, California. In attendance were Plaintiff BRANDY OLMSTED, a co-worker Jessica Martin, Marc and Janice Brusie, Christina Clerici, Paul Nelson and other FPG employees. Defendant LOPEZ informed the dinner attendees that he was praise worthy of their sales objectives. LOPEZ expensed the dinner on the FPG credit card.

16. The dinner hosted by LOPEZ on behalf of Defendants FPG, was the last stop in LOPEZ' business trip to California and followed a business stop at FPG's Oak Hill Memorial Park, located is San Jose. LOPEZ expected all Chico FPG commission sales representatives which included to attend the Chico dinner. There was no question in Plaintiff's mind that attendance was mandatory. This was a work-related event where FPG business was discussed.

17. Defendant LOPEZ continuously served Plaintiff BRANDY OLMSTED with alcohol. As the evening went on Plaintiff increasingly felt the effects of the alcohol. Plaintiff alleges on information and belief that Defendant LOPEZ may have drugged her. Plaintiff BRANDY OLMSTED has no recollection of leaving the dinner. She was passed out at the hotel room. She could not fight LOPEZ off her in the hotel room. She could not lift any of her

1 extremities. Additionally, Plaintiff would never had consented to a cell phone sex video
2 tape which was taken by Defendant LOPEZ and later discovered by Plaintiff.

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4 18. BRANDY OLMSTED could not later recall the events until about 3:30 a.m., in the early
5 morning of February 13, 2021. She experienced disorientation and could not recall any
6 aspect of the night in Defendant LOPEZ' hotel room.

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8 19. At approximately 3:30 a.m., on Saturday February 13, 2021, Plaintiff BRANDY
9 OLMSTED was awakened to pressure on her breasts. When she opened her eyes she was
10 laying on her back on a bed and she felt and observed Defendant LOPEZ biting and
11 aggressively fondling her breasts. Her top was off and her underwear was on in an usual
12 way. She immediately pushed LOPEZ off her and demanded to leave. She next looked at
13 her cell phone to determine the time. Defendant LOPEZ walked over to Plaintiff from
14 behind and said, "I have been waiting to do this to you for a long time." Plaintiff demanded
15 to be taken home. As she was leaving Plaintiff observed that the Diamond Hotel room in
16 Chico had a specific green carpet pattern. Plaintiff felt vaginal pain afterwards which led
17 her to conclude that Lopez had sexual intercourse with her during the assault.

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19 20. Defendant LOPEZ stopped the sexual assault and drove Plaintiff to her residence where her
20 fiancé was waiting outside their home. Plaintiff's fiancé had been calling and texting
21 Plaintiff all evening.

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23 21. When she arrived home at 4:00 a.m. on February 13, 2021 Plaintiff fiancé was present and
24 expressed his concerns. Plaintiff's fiancé and plaintiff's girlfriends had texted her all night.
25 She did not report the incident to her fiancé and felt ashamed and humiliated.
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1 22. The following Monday, February 15, 2021, Defendant LOPEZ texted Plaintiff who was at
2 FPG's Chico Cemetery location informing her that his flight had been cancelled due to
3 weather and that he needed to meet with her. Defendant LOPEZ is a senior member of
4 Defendants FPG's management team and plaintiff did not want to jeopardize her job.
5 Plaintiff reluctantly complied. In Defendant LOPEZ' vehicle, LOPEZ stated to Plaintiff if
6 she reported anything about the weekend encounter he would deny it and no one would
7 believe her. Defendant LOPEZ threatened Plaintiff's job.
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10 23. Next, on Wednesday, February 17, 2021 Defendant LOPEZ contacted BRANDY
11 OLMSTED and asked her to meet him at the Diamond Hotel and assist him in selling the
12 hotel owner Wayne Cook FPG services, as he was a good lead to sell. LOPEZ further
13 informed Plaintiff that he wanted to sell the hotel owner with funeral planning services.
14 Plaintiff was reluctant and feared losing her job so she complied and went to the Diamond
15 Hotel. The hotel was located within Plaintiff's sales geographic area.
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17 24. LOPEZ instructed Plaintiff to go to his room for the meeting sales meeting which was about
18 to occur with Mr. Cook. Plaintiff went to the hotel around 3:00 p.m. believing she was
19 going to meet LOPEZ together with Wayne Cook. When Plaintiff arrived at the room only
20 LOPEZ was present. LOPEZ closed the door and began an attempt unbutton Plaintiff's
21 blouse. LOPEZ next leaned in tried to forcefully kiss her but she pushed him off. Then
22 LOPEZ received a call from the front desk indicating that Mr. Cook was downstairs ready
23 for the meeting. Plaintiff then left the room, went downstairs and saw Mr. Cook. LOPEZ
24 then tried to sell Cook FPG services.
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1 25. Next, in about May 5, 2021 Defendant LOPEZ arrived at Chico, California, and met with
2 the FPG Chico Management for dinner at La Salle restaurant in Chico. This was another
3 work-related event with the Chico sales staff. This meeting was referenced as the Mother's
4 Day Funeral sales meeting. Plaintiff arrived as the group proceeded to go to the University
5 Bar in Chico. While the group went to the bar to order drinks, Plaintiff and LOPEZ
6 remained alone at the table. LOPEZ leaned into Plaintiff BRANDY OLMSTED and said,
7 "here look, I have something to show you." LOPEZ then placed his cell phone near
8 Plaintiff's face and showed a cell phone video clip of Plaintiff laying unconscious,
9 motionless on her stomach with Lopez placing his hand on her back. Plaintiff recognized
10 herself due to seeing her scar on her buttocks. Plaintiff only watched about 10 seconds and
11 turned away in disgust. LOPEZ informed Plaintiff that if anyone such as his wife tried to
12 open the cryptic video on his phone it would delete automatically after two attempts.
13 Plaintiff pulled away and sat at the far end of the table away from Andy.

14 26. Also, during the FPG's Chico Mother's Day sales rush meeting, Defendant LOPEZ met
15 with Paul Nelson, FPG's Regional Operation Market Manager. Over the company dinner
16 at a Chico restaurant with the Operations Market Manager, LOPEZ informed Paul Nelson
17 he wanted to show him a video. LOPEZ then stated, "Bros before Hoes," and showed
18 Nelson a video from his phone which depicted LOPEZ violating BRANDY OLMSTED
19 with his fingers in her vagina while LOPEZ was masturbating. Plaintiff BRANDY
20 OLMSTED was naked, motionless and on her stomach. She was clearly incapacitated.

21 27. Thereafter, on June 1, 2021 the Operations Market Manager Paul Nelson reported the
22 incident to FPG's Area VP of Operations, Benjamin Farnstrom. The next day, June 2, 2021,
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1 Operations Market Manager Nelson sent a detailed 4 page email to FPG's Director of
2 Human Resources, Julie Judge setting forth the events of February 12th as a percipient
3 witness to LOPEZ with Plaintiff drinking alcohol. He described in further detail the events
4 of May 8, 2021 where LOPEZ had shown him the cell phone sex video of LOPEZ and
5 BRANDY OLMSTED who was motionless and naked as sex acts being performed on
6 Plaintiff.
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8 28. It was clear that as of June 1st and June 2, 2021 Defendants FPG had evidence and proof
9 that a severe sexual harassment of Plaintiff BRANDY OLMSTED had transpired and their
10 Area 1 Sales Director, LOPEZ was circulating a sex tape cell phone video of Plaintiff
11 BRANDY OLMSTED within the company's work environment. Defendant FPG next
12 interviewed Defendant LOPEZ, who denied the encounter. Plaintiff alleges on information
13 and belief that Ms. Judge did not obtain a declaration from LOPEZ averring under penalty
14 that nothing happened. Defendant FPG then terminated the employment of Operations
15 Market Manager, Paul Nelson. It was clear that FPG had evidence of the documented
16 sexual assault.
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19 29. Thereafter, in June 2021 Plaintiff received a call from FPG Director of Human Resources
20 Julie Judge. Ms. Judge asked Plaintiff about her views on her managers. The questions
21 centered around plaintiff's work relationship with her managers. Ms. Judge asked plaintiff
22 about February 12th and if she had drinks with Andy. Plaintiff, mindful of Andy's work
23 threat and fearful of getting fired, responded to Ms. Judge that nothing happened and she
24 got a ride home with Andy.
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1 30. At no time in that discussion did Julie Judge inform Plaintiff about the sex tape video of her
2 and LOPEZ.

3 31. Next, in about the third week in June, 2021 Plaintiff received a message from FPG manager
4 Janice Brusie to have a phone meeting with Julie Judge. In the phone meeting, Ms. Judge
5 asked Plaintiff if there was any sexual activity between her and Andy. Plaintiff requested
6 to know why was she being asked these questions and Ms. Judge responded that Paul
7 Nelson, the Operations Market Manager was stating that Andy had verbalized she and Andy
8 had sex. Ms. Judge further responded that Andy had informed Paul, the Operations
9 Manager, that he had had sex with her. Plaintiff asked Ms. Judge for the documentation but
10 Ms. Judge said no. At no time in that discussion did Ms. Judge inform Plaintiff BRANDY
11 OLMSTED of the sex tape video which had been circulated by LOPEZ to other male FPG
12 managers.
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16 32. By this time, FPG through its Director of HR, Ms. Judge, had sufficient evidence of the sex
17 video and the horrible effects of Plaintiff BRANDY OLMSTED being subjected to a hostile
18 work environment by the dissemination of sex tape of her and LOPEZ. Julie Judge was
19 misrepresenting material facts to Plaintiff BRANDY OLMSTED, all to plaintiff's
20 detriment. This misrepresentation served to fuel Plaintiff's hostile work environment.
21

22 33. Plaintiff next learned that Defendant LOPEZ had been showing his pornographic sex tape
23 phone video of Plaintiff in his hotel room to others in the company. Plaintiff received the
24 Operations Market Manager's four (4) page detailed email complaint to Julie Judge,
25 evidence that a cell phone sex tape video was being circulated within FPG's male managers.
26 Plaintiff now was aware that Julie Judge had intentionally misrepresented the facts to her.
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1 Plaintiff was incensed and appalled that a sex tape video of her has being circulated by
2 FPG's Area 1 Sales Director, a person at the top of Plaintiff's management reporting
3 structure.
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5 34. Next, on about July 21, 2021, Julie Judge and the company's counsel tried to pressure
6 Plaintiff into signing a declaration under penalty that nothing of a sexual manner had
7 transpired on February 12, 13th with Andy Lopez. The declaration authored by FPG's
8 counsel stated that Plaintiff did not go to a hotel room with LOPEZ on the night of February
9 12 or 13th, 2021. It further stated read that Andy who drove her home did not engage in or
10 direct any non-consensual conduct of any kind towards me that night, or ever. This conduct
11 on Defendant FPG's part was FEHA Retaliation towards Plaintiff. FPG attempted to avoid
12 liability by misrepresenting the facts to Plaintiff and force her to sign a liability denial
13 declaration was retaliatory, all to the detriment of Plaintiff's employment rights. Plaintiff
14 BRANDY OLMSTED informed Judge and her counsel that we would not sign their
15 declaration which had been emailed directly to plaintiff. Plaintiff was next threatened and
16 intimidated by FPG Julie Judge and FPG's counsel who told Plaintiff that if she did not
17 sign, she would need to be in court in a court action. This court action threat was
18 subsequently made again.
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22 35. In the afternoon of July 27, 2021 Plaintiff filed a police report with the Chico Police
23 Department alleging a non-consensual sex crime against Andy Lopez.

24 36. Plaintiff BRANDY OLMSTED was in a hostile work environment over the sexual
25 harassment and sexual assault perpetrated by LOPEZ and due to the intentional
26 misrepresentation of the facts to Plaintiff by Julie Judge. This conduct on the part of FPG
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1 and its Director of Human Resources together with their attempts to force and intimidate
2 Plaintiff into signing a declaration under penalty that nothing had transpired between her
3 and LOPEZ was a form of FEHA Retaliation.
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5 37. Thereafter, in about July 27, 2021 BRANDY OLMSTED informed her manager Michelle
6 Crandall that Andy Lopez had assaulted her and that he had non-consensual sex with her.
7 Michelle told Plaintiff that they needed to call Julie Judge. Ms. Judge came on the speaker
8 phone and Plaintiff informed her that Andy Lopez had non-consensual sex with her.
9 Plaintiff also stated that she learned that LOPEZ had been showing a cell phone sex tape
10 video of her to other male FPG managers. Plaintiff then confronted Judge on why Judge
11 had only told her that LOPEZ was only verbalizing that he had sex with her. Plaintiff asked
12 Judge why she had not revealed the sex video to her. Ms. Judge remained silent.
13

14 38. Thereafter, in about August 6, 2021 Plaintiff became constructively discharged from her
15 employment. Plaintiff wrote a note to Defendants FPG stating that she had been sexually
16 assaulted by Andy Lopez and that after the incident Julie Judge had stated to her that Andy
17 Lopez only verbalized to another male employee of him having sex with her. Plaintiff
18 further indicated that she subsequently learned about a sex video of her and Lopez
19 circulating. Further, Plaintiff detailed that she came forward and informed her manager
20 Michelle Crandall and Julie Judge that Andy Lopez had non-consensual sex with her at a
21 work event. Plaintiff closed her note by indicating that she was in a very unhealthy work
22 environment for her to continue working at FPG.
23

24 39. Defendants FPG had advanced knowledge of ANDY LOPEZ' unfitness as an Area Sales
25 Market Leader and dismissed it and continued to employ him all to the detriment of Plaintiff
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1 and other female employees. On about May 9, 2021 following LOPEZ showing Operations
2 Manager, Paul Nelson the cell phone video sex tape, Nelson informed FPG's Oregon Market
3 Leader Joe Sharps the details of what LOPEZ had done and shown him. Market Leader Joe
4 Sharps informed Paul Nelson that for some time now, he had observed similar conduct, on
5 the part of LOPEZ. According to Sharps, LOPEZ would hold FPG restaurant dinners and
6 pub drinking events with FPG employees within the Oregon region. Sharps further detailed
7 that LOPEZ would interact during the dinners with a certain young 21 year old FPG
8 employee where they would both exhibited flirting behavior. Mr. Sharps noticed LOPEZ
9 and the female often left together and he believed that they went back to LOPEZ' hotel
10 room. This observation and revelation was in violation of FPG's policies and due to Sharp's
11 high level position was imputed Notice on Defendant FPG. FPG's Market Leader Sharps
12 stated to Nelson that Andy was "bad news" and was acting inappropriate with the young
13 female employee. Sharps expressed similar concerns to the BRANDY OLMSTED event
14 to the Paul Nelson, FPG Operations Market Manager.

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18 40. Additionally, and before June 1, 2021, VP of Operations Benjamin Farnstrom directed Paul
19 Nelson to stop interacting with LOPEZ when he wanted to take the sales team out for dinner
20 and drinks. Farnstrom expressed a concern to Paul Nelson that he believed Andy had been
21 carrying on an affair with young FPG female employee. Joe Sharps was in agreement over
22 Andy's inappropriate workplace sexual behavior and told Nelson that he did not want to be
23 around Andy due to Andy's behavior with the company's young female FPG employee(s).

41. Within the time provided by law, Plaintiff BRANDY OLMSTED has filed a complaint with the California Department of Fair Employment and Housing, in full compliance with the FEHA, and has obtained a “Right to Sue” letter

FIRST CAUSE OF ACTION
SEX AND GENDER DISCRIMINATION
(Against Defendants FPG)

42. Plaintiff incorporates by reference the allegations set forth above and below.

43. Defendants FPG are employers governed by Government Code §12900, et seq. Defendants’ sex and gender discrimination was a violation of California Government Code §12940.

44. Plaintiff has been damaged as alleged above as a legal result of these Defendants’ sex and gender discrimination.

45. Despite of their knowledge of the foregoing including the cell phone video sex tape circulating within Plaintiff’s work environment, these Defendants took adverse actions against Plaintiff, including misrepresenting of facts and demanding the signing to an intimidating and false declaration; and, causing her constructive termination because of her sex, and/or gender.

46. In engaging in the foregoing conduct, these Defendants aided, abetted, incited, participated in, coerced and/or compelled unlawful employment practices in violation of California Fair Employment and Housing Act.

47. As a direct and foreseeable result of the afore said acts of these said Defendants, Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at the time of trial. Plaintiff claims such amount as damages together with pre-judgment interest

1 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-
2 judgement interest.

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4 48. As a result of the aforesaid acts of these Defendants, Plaintiff claims general damages for
5 mental and emotional distress and aggravation in an amount to be proven at the time of trial
6 including special damages.

7 49. The above-described acts of these Defendants, by and through, and/or authorized and
8 ratified by, their managing agents, officers or directors, were engaged with deliberate, cold,
9 callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or
10 with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and
11 constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294.
12 Plaintiff requests an assessment of punitive damages against these Defendants, in an amount
13 to be proven at the time of trial.
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16 50. Plaintiff will also seek and is entitled to recover attorney's fees in connection with this
17 cause of action under Government Code section 12940, et seq.

18 51. WHEREFORE, Plaintiff requests relief as hereafter provided.
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21 **SECOND CAUSE OF ACTION**
22 **SEXUAL HARASSMENT/HOSTILE WORK ENVIRONMENT**
(Against All Defendants)

23 52. Plaintiff incorporates by reference the allegations set forth above and below.

24 53. Defendants FPG are employers governed by Government Code §12900, et seq. Defendants'
25 Sexual Harassment/Hostile Work Environment was a violation of California Government
26 Code §12940. Defendants, and each of them, have breached their statutory and self-
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1 imposed duties owed to plaintiff under defendants' representations, policies and procedures,
2 and under California law, including Section 12940 (a), et seq., of the California Government
3 Code.
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5 54. At all times herein relevant, Defendant ANDY LOPEZ was a high-level manager over
6 Plaintiff. Under the FEHA, his conduct is strict liability on the employer. The conduct of
7 Defendants, and each of them, was directly harassing of Plaintiff, and contributed to a work
8 place environment hostile to Plaintiff, based on Plaintiff's sex, in violation of California
9 Government Code § 12940 et seq., including § 12940(h)(j).
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11 55. In engaging in the foregoing conduct, these Defendants aided, abetted, incited, participated
12 in, coerced and/or compelled unlawful employment practices in violation of California's
13 Fair Employment and Housing Act.
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15 56. In engaging in the foregoing conduct, these Defendants aided, abetted, incited, participated
16 in, coerced and/or compelled unlawful employment practices in violation of California Fair
17 Employment and Housing Act.
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19 57. As a direct and foreseeable result of the afore said acts of these said Defendants, Plaintiff
20 has lost and will continue to lose income and benefits in an amount to be proven at the time
21 of trial. Plaintiff claims such amount as damages together with pre-judgment interest
22 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-
23 judgement interest.
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25 58. As a result of the aforesaid acts of these Defendants, Plaintiff claims general damages for
26 mental and emotional distress and aggravation in an amount to be proven at the time of trial
27 including special damages.
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59. The above-described acts of these Defendants, by and through, and/or authorized and ratified by, their managing agents, officers or directors, were engaged with deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages against these Defendants, in an amount to be proven at the time of trial.

60. Plaintiff will also seek and is entitled to recover attorney's fees in connection with this cause of action under Government Code section 12940, et seq.

61. WHEREFORE, Plaintiff requests relief as hereafter provided.

THIRD CAUSE OF ACTION
Assault and Battery against All Defendants
(Violation of California Civil Code Section 1708.5)

62. Plaintiff incorporates by reference the allegation set forth above and below.

63. Plaintiff complains against Defendants FPG and LOPEZ, and realleges all allegations contained in the complaint, and incorporates them by reference into this cause of action as though fully set forth herein.

64. The above conduct by Defendant LOPEZ is in violation of Civil Code section 1708.5, in that said Defendant acted with the intent to cause a harmful or offensive contact with an intimate part of Plaintiff, and a sexually offensive contact with Plaintiff directly occurred. Defendant LOPEZ' conduct also caused Plaintiff to suffer imminent apprehension of such contact occurring. The conduct occurred during a work-related employment event. But for the work-related event that alleged offensive conduct would not have occurred.

65. As a further proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to her damage in a sum according to proof at time of trial.

66. The above described acts of these Defendants' conduct, by and through, and/or authorized and ratified by their managing agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages against these Defendants, in an amount to be proven at the time of trial.

67. Defendants FPG had advance knowledge of Defendant LOPEZ' inappropriate sexual relationships with its young female employees. Defendant FPG through and by, *inter alia*, Market Manager Joe Sharps and Vice President of Operations Ben Farnstrom, who were managing agents, had advanced knowledge of Defendant LOPEZ' unfitness as an employee, all to the detriment of Plaintiff and other female employees; thereby, within the meaning of Civil Code section 3294 for punitive damages. Plaintiff requests an assessment of punitive damages against said Defendants, in an amount to be proven at time of trial.

68. WHEREFORE, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION
RETALIATION
(Against Defendants FPG)

69. Plaintiff incorporates by reference the allegations set forth above and below.

70. At all times, Government Code Section 12926 et seq., including 12926(k)(4), was in full force and effect and binding upon Defendants. Government Code section 12940(j) and (k) imposes a duty of an employer to promptly and thoroughly investigate any claim of harassment. These sections provide that no employer shall retaliate against an employee because of opposing discrimination, harassment under these sections. As a result of said opposition, Plaintiff was subjected to retaliation. Plaintiff was intentionally lied to over the cell phone sex tape circulating within her work environment. This amounted to retaliatory harassment. Additionally, as alleged hereinabove, Plaintiff was terminated in the form of constructive termination on about August 6, 2021.

71. Herein, Defendants FPG intentional misrepresentation of the facts to Plaintiff by Julie Judge. This conduct on the part of FPG and its Director of Human Resources together with their attempts to force and intimidate Plaintiff into signing a declaration under penalty that nothing had transpired between her and LOPEZ constituted FEHA Retaliation. Defendants FPG attempted to coerce and intimidate Plaintiff with threats of court actions to sign their “liability expunging” declaration, despite their advance knowledge from evidence that LOPEZ was showing a cell phone sex tape video of Plaintiff. These misrepresentations made to Plaintiff violated Defendants obligations under section 12940(j) and (k).

72. As a result of Defendants failure to investigate and prevent harassment and discrimination, and the actual constructive termination and wrongful termination in violation of public policy, Defendants wrongfully retaliated against Plaintiff.

73. In engaging in the foregoing conduct, these Defendants aided, abetted, incited, participated in, coerced and/or compelled unlawful employment practices in violation of California Fair Employment and Housing Act.

74. As a direct and foreseeable result of the afore said acts of these said Defendants, Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at the time of trial. Plaintiff claims such amount as damages together with pre-judgment interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgement interest.

75. As a result of the aforesaid acts of these Defendants, Plaintiff claims general damages for mental and emotional distress and aggravation in an amount to be proven at the time of trial including special damages.

76. The above described acts of these Defendants, by and through, and/or authorized and ratified by, their managing agents, officers or directors, were engaged with deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages against these Defendants, in an amount to be proven at the time of trial.

77. Plaintiff will also seek and is entitled to recover attorney's fees in connection with this cause of action under Government Code section 12940, et seq.

WHEREFORE, Plaintiff requests relief as hereafter provided.

FIFTH CAUSE OF ACTION
FAILURE TO PREVENT SEXUAL HARASSMENT, RETALIATION,
DISCRIMINATION
(Against Defendants FPG)

78. Plaintiff incorporates by reference the allegations set forth above and below.

79. Defendants, by permitting the sexual harassment/hostile work environment, retaliation and gender discrimination to occur, failed to take all reasonable steps necessary to prevent harassment, discrimination and retaliation from occurring in violation of Government Code §12940(k) and all applicable regulations under the California Code of Regulations. Plaintiff was injured and damaged as alleged above as a direct and legal result of Defendants' conduct.

80. At all times mentioned in this complaint, Government Code sections 12940 et seq., including 12940(j)&(k) was in full force in effect, and binding on Defendants FPG. This section requires said Defendants to take all reasonable steps necessary to prevent harassment, discrimination, retaliation from occurring.

81. As a proximate result of these Defendants actions and failure to act, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

82. The above described acts of these Defendants, by and through, and/or authorized and ratified by, their managing agents, officers or directors, were engaged with deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiff

1 requests an assessment of punitive damages against these Defendants, in an amount to be
2 proven at the time of trial.

3
4 83. Defendants FPG had advance knowledge of Defendant LOPEZ' inappropriate sexual
5 relationships with its young female employees. Market Manager Joe Sharps and Vice
6 President of Operations Ben Farnstrom, who was a managing agent, had advanced
7 knowledge of Defendant LOPEZ' unfitness as an employee, all to the detriment and
8 oppression of Plaintiff and other female employees; thereby, within the meaning of Civil
9 Code section 3294. Plaintiff requests an assessment of punitive damages against said
10 Defendants, in an amount to be proven at time of trial.

11
12 84. Plaintiff will also seek and is entitled to recover attorney's fees in connection with this cause
13 of action under Government Code section 12940, et seq.

14 85. WHEREFORE, Plaintiff requests relief as hereinafter provided.

15
16 **SIXTH CAUSE OF ACTION**
17 **NEGLIGENT SUPERVISION AND RETENTION OF EMPLOYEE**
(Against Defendants FPG)

18 86. Plaintiff incorporates by reference the allegations set forth above and below.

19 87. These Defendants knew, or reasonably should have known, that Plaintiff's supervisor was
20 engaging in the unlawful behavior described above.

21
22 88. At all times material herein, these Defendants knew, or reasonably should have known, that
23 the conduct, acts and failures to act of all supervisors, agents and employees as described
24 hereinabove violated Plaintiff's rights under state statutes including Gov. Code section
25 12940 et. seq.
26
27
28

89. At all times material herein, these Defendants knew, or reasonably should have known, that the incidents, conduct, acts and failures to act described hereinabove would and did proximately result in emotional distress and personal injury to Plaintiff.

90. At all times material herein, these Defendants knew, or reasonably should have known, that unless these Defendants intervened to protect Plaintiff, and to adequately supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the conduct, acts and failures to act of all supervisors, agents and employees as alleged hereinabove, said conduct, acts and failures to act would continue, thereby subjecting Plaintiff to personal injury, tortious injury and emotional distress.

91. These Defendants knew, or in the exercise of reasonable care should have known, that unless these Defendants intervened to protect Plaintiff, and to adequately supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the conduct, acts and failures to act as described herein, Defendant's failure to so protect, supervise, and intervene would have the effect of encouraging, ratifying, condoning, exacerbating, increasing and worsening said conduct, acts, and failures to act.

92. At all times material herein, these defendants had the power, ability, authority, and duty to intervene, supervise, prohibit, control, regulate, discipline, and/or penalize such conduct, acts, and failures to act or to otherwise protect Plaintiff.

93. Despite said knowledge, power, and duty, these defendants negligently failed to act so as to prevent, supervise, prohibit, control, regulate, discipline, and/or penalize such conduct, acts, and failures to act or to otherwise protect Plaintiff.

1 94. As a direct and proximate result of the failure of Defendant to protect Plaintiff, and to
2 adequately supervise, prohibit, control, regulate, discipline, and/or penalize such conduct,
3 acts, and failures to act of all supervisors, agents and employees as alleged hereinabove,
4 said conduct, acts, and failures to act were perceived by them as, and in fact had the effect
5 of encouraging, ratifying, condoning, exacerbating, increasing and/or worsening said
6 conduct, acts, and failures to act.
7

8 95. At all times material herein, the failure of defendant to protect Plaintiff, and to adequately
9 supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the conduct,
10 acts, and failures to act of all supervisors, agents and employees violated Plaintiff's rights
11 under Government Code section 12940 et seq. and her right not to be battered.
12

13 96. These Defendants' actions, as set forth above, violated the fundamental policy set forth in
14 Government Code sections 12940(a), (k), (m), and (n).
15

16 97. As a direct and proximate result of Defendants' actions, Plaintiff has suffered and will
17 continue to suffer pain, suffering, and extreme and severe mental anguish and emotional
18 distress.
19

20 98. The above-described acts of these Defendants, by and through, and/or authorized and
21 ratified by, their managing agents, officers or directors, were engaged with deliberate, cold,
22 callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or
23 with a conscious disregard of Plaintiff and her rights. Such acts were despicable, and
24 constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294.
25 Plaintiff requests an assessment of punitive damages against these Defendants, in an amount
26 to be proven at the time of trial.
27
28

99. Plaintiff will also seek and is entitled to recovery of attorney's fees in connection with this cause of action under Government Code section 12940 et seq.

100. WHEREFORE, Plaintiff requests relief as hereinafter provided.

WHEREFORE, Plaintiff prays for judgement against Defendants, and each of them, as follows:

1. For general, special and consequential damages in an amount of excess of the jurisdictional limits of this Court, according to proof;
2. For exemplary damages in an amount necessary to punish Defendants and to deter such conduct in the future, according to proof;
3. For reasonable attorney's fees under the FEHA and under any applicable statute, costs and expenses of litigation, according to proof;
4. For pre-judgment and post-judgment interest;
5. For Injunctive relief to abate discrimination; including all reasonable attorney's fees under the holding of *Harris v. City of Santa Monica*, (2013) 56 Cal.4th 203;
6. For economic damages;
7. For non-economic damages;
8. For such other and further relief as the Court may deem proper.

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1 DATED: August 27, 2021

THE VELEZ LAW FIRM, PC

2
3 /s/Mark P. Velez

4 By: Mark P. Velez, Esq.

5 Natalya V. Grunwald, Esq.

6 Attorneys for Plaintiff

7 BRANDY OLMSTED

8
9 **JURY TRIAL DEMANDED**

10 Plaintiff BRANDY OLMSTED hereby demands trial of all issues by jury.

11
12 DATED: August 27, 2021

THE VELEZ LAW FIRM, PC

13
14 /s/ Mark P. Velez

15 By: Mark P. Velez, Esq.

16 Natalya V. Grunwald, Esq.

17 Attorneys for Plaintiff

18 BRANDY OLMSTED